LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 4 1965
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 746

JOSEPH ALEXANDER, ET AL., *Petitioners*,

v.

HENRITA TODMAN, ET AL., *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

ALFRED L. SCANLAN,
734-15th Street, N.W.,
Washington 5, D.C

ANTOINE JOSEPH,
46 Company Street.
Christiansted,
St. Croix, Virgin Islands.

DAVID B. ISBELL,
Union Trust Building,
Washington 5, D.C.

JOHN L. MADURO,
33 Droningens Gade,
Charlotte Amalie,
St. Thomas, Virgin Islands.

JAMES BOUGH.
Emancipation.
Charlotte Amalie,
St. Thomas, Virgin Islands.

Attorneys for Respondents

Of Counsel:

SHEA & GARDNER,
734-15th Street, N.W.,
Washington 5, D.C.

COVINGTON & BURLING,
Union Trust Building,
Washington 5, D.C.

January 4, 1965.

TABLE OF CONTENTS

Item	Page
Opinions Below	1
Jurisdiction	1
Question Presented	2
Statutory Provisions Involved	2
Statement	2
A. *The Basic Facts*	2
B. *Pertinent Developments Since the Appeals Were Docketed*	2
Argument	4
Conclusion	7

INDEX

Cases:

Application of O'Shaughnessy, 32 Misc. 2d 850, 223 N.Y. Supp. 2d 403, affirmed, 223 N.Y. 2d 408	4
Briscoe v. *Boyle*, (Tex. Civ. App.) 286 S.W. 275	5
In Re Gilhuly, 124 Conn. 271, 199 A. 436	5
Love v. *Wilcox*, 119 Tex. 256, 28 S.W. 2d 515	5
Mills v. *Green*, 159 U.S. 651, 653	7
Texas Power Co. v. *T.V.A.*, 306 U.S. 118, 147	6
Trosclair v. *Parish Democratic Committee*, 120 La. 620, 45 So. 526	5
United States v. *Parke, Davis & Co.*, 362 U.S. 29, 44	6
Werbel v. *Gernstein*, 191 Misc. 275, 78 N.Y. Supp. 2d 440, 443	4

Statutes:

New York Election Law, § 332(2)	4
Section 22 of the V.I. Organic Act of 1954, 68 Stat. 506 (1954), 48 U.S.C. 1612	1
28 U.S.C. 1291	2
18 V.I. Code 108(b)	2
18 V.I. Code 303	2
18 V.I. Code 344	2
18 V.I. Code 411(a)	2
18 V.I. Code 412	2
18 V.I. Code 629	2

Miscellaneous:

Item	Page
153 A.L.R. 646	5
15 C.J.S. 996	6
29 C.J.S. 156	5
Mitau, *Judicial Determination of Political Party Organization Autonomy*, 42 Minn. L.R. 245, 257 (1957)	5
6 Moore's Federal Practice 3074	7

Newspaper References:

Philadelphia Evening Bulletin, August 26, 1964, p. B-2	3
Virgin Islands Daily News, August 25, 1964, p. 1	3
Virgin Islands Daily News, August 29, 1964, p. 1	3
Virgin Islands Daily News, September 14, 1964, pp. 1, 14	3
Virgin Islands Daily News, November 4, 1964, pp. 1-2	4, 6
Virgin Islands Home Journal, August 25, 1964, p. 3	3
Virgin Islands Home Journal, August 30, 1964, p. 3	3
Virgin Islands Home Journal, September 9, 1964, pp. 1, 4	3
Virgin Islands Home Journal, November 4, 1964, p. 3	4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 746

JOSEPH ALEXANDER, ET AL., *Petitioners*,

v.

HENRITA TODMAN, ET AL., *Respondents*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Opinions Below

These cases were consolidated for trial in the District Court for the Virgin Islands, and were treated together in the opinion and judgment of the United States Court of Appeals for the Third Circuit, whose opinion has been officially reported in 337 F. 2d 962.

Jurisdiction

The District Court for the Virgin Islands had jurisdiction by virtue of Section 22 of the Virgin Islands Organic Act of 1954, 68 Stat. 506 (1954), 48 U.S.C. 1612.

Jurisdiction of the United States Court of Appeals for the Third Circuit over the two appeals in these cases rested on 28 U.S.C. 1291.

Question Presented

Did the Court of Appeals for the Third Circuit incorrectly decide that the District Court for the Virgin Islands had erred in holding that the respondents (with the exception of the Supervisor of Elections), by enrolling in the Democratic Party, and by nominating, supporting, voting and running as candidates in the Democratic primary for election as members of the Territorial Committee of the Democratic Party of the Virgin Islands, had engaged in an unlawful conspiracy?

Statutory Provisions Involved

In addition to the statutory provisions listed in the petition for *certiorari*, several other provisions of the Virgin Islands Election Code are relevant. These are: 18 V.I. Code 108(b), 303, 344, 411(a), 412, and 629. These statutory provisions are set out at pp. A-50, A-42, A-53, A-55, and A-54, respectively, in the appendix printed with the petition for *certiorari*.

Statement

A. *The Basic Facts.* Respondents do not accept the statement set forth at pp. 5 through 9 of the petition for *certiorari*. They prefer to rest upon the fair and full statement of facts in the opinion of the Court of Appeals.[1]

B. *Pertinent Developments Since the Appeals Were Docketed.* Since these appeals were first docketed in the

---

[1] See pp. A-39 through A-44 of the appendix printed with petition for certiorari, and 337 F. 2d 962, 963-67.

Third Circuit Court of Appeals in early August 1964, certain events have occurred which bear on the issues involved and which, because of their public character, we suggest the Court may consider by way of judicial notice. First, delegates and alternates chosen by the respondents' group within the Democratic Party of the Virgin Islands were seated in the National Convention of the Democratic Party, held in Atlantic City, New Jersey, August 23-27, 1964, despite a formal challenge to their credentials unsuccessfully pressed before the Credentials Committee by a group of delegates and alternates sponsored by the petitioners. *Philadelphia Evening Bulletin*, August 26, 1964, p. B-2; *Virgin Island Daily News*, August 25, 1964, p. 1; *Virgin Islands Home Journal*, August 25, 1964, p. 3. Second, the Democratic National Committeeman for the Virgin Islands chosen by the respondents' group was accepted by the Democratic National Committee, while a candidate put forward by the petitioners was refused a seat as a member of the new National Committee selected at the conclusion of the 1964 Democratic Convention. *Virgin Islands Daily News*, August 29, 1964, p. 1; *Virgin Islands Home Journal*, August 30, 1964, p. 3. Finally, developments relating to the October 1, 1964 primary election of the Democratic Party of the Virgin Islands and to the general election of November 3, 1964 are relevant. The petitioners' faction filed candidates for the primary election, but then withdrew them. *Virgin Islands Home Journal*, September 9, 1964, pp. 1, 4. This group of candidates then announced that they would run as members of an independent slate in the general election of November 3, 1964, in opposition to the candidates selected by the Democratic Party of the Virgin Islands represented by the respondents' group. *Virgin Islands Daily News*, September 14, 1964, pp. 1, 14. In the general election, six Democratic candidates and five

of the independent candidates sponsored by the petitioners' group were elected to the legislature. *Virgin Islands Daily News,* November 4, 1964, pp. 1-2; *Virgin Islands Home Journal,* November 4, 1964, p. 3.

Argument

1. It is no basis for the grant of *certiorari* that this Court has not decided the precise question involved in this case. The issue is not one of federal law but of territorial law only.

2. Even if it were true that the Court of Appeals' decision reached a result at variance with certain decisions of the courts of New York, such divergence of opinion among local jurisdictions would furnish no basis for the grant of *certiorari.* However, the fact is, as the careful opinion of the Court of Appeals notes,[2] the petitioners are mistaken in arguing that the decision below is contrary to decisions on similar facts rendered by the courts of New York. The New York decisions were based on specific statutory provisions of New York's election law which find no counterpart in the Virgin Islands Election Code.[3] The New York cases, therefore, are neither analogous nor controlling. Nor are they in conflict with the decision of the Court of Appeals in this case. Under New York law, the power which the statutes give the courts of New York to determine questions of voter or candidate eligibility is strictly confined to the categories enumerated in the statute. *Application of O'Shaughnessy,* 32 Misc. 2d 850, 223 N.Y. Supp. 2d 403, affirmed, 223 N.Y. 2d 408; see also *Werbel* v. *Gernstein,* 191 Misc. 275, 78 N.Y. Supp. 2d 440, 443. In this respect, therefore, both the Third Circuit in this

---

[2] See p. A-64, f.n. 33 of the appendix printed with the petition for certiorari.

[3] New York Election Law, § 332(2).

case, and the New York decisions also follow the unanimous view of the state courts in maintaining that no court, election official, or party officer can impose, or insist on, any other tests or conditions for the enrollment of voters and the selection of primary nominees beyond, or contrary to, those specified in applicable state election laws. 29 C.J.S. 156; *Love* v. *Wilcox*, 119 Texas 256, 28 S.W. 2d 515; *Trosclair* v. *Parish Democratic Committee*, 120 La. 620, 45 So. 526, 153 A.L.R. 646; *Briscoe* v. *Boyle*, (Tex. Civ. App.), 286 S.W. 275; *In Re Gilhuly*, 124 Conn. 271, 199 A. 436; and see also, Mitau, *Judicial Determination of Political Party Organization Autonomy*, 42 Minn. L.R. 245, 257 (1957).

3. The Court of Appeals has correctly decided these cases. However, even if it had not, there is simply no truth to petitioners' claim that the decision of the Court of Appeals "would apply to all similar situations . . . in the continental United States."[4] The decision of the Third Circuit regarding the Virgin Islands Code has no compelling force beyond the Virgin Islands.

4. Respondents perhaps should pass over the rhetoric of the petitioners in arguing that the decision of the Court of Appeals "could lead to the establishment of a one party system of government in the United States, as it has in the Virgin Islands." However, taking the lesser exaggeration first, we refer the Court to the Third Circuit's opinion which points out, quite correctly, the narrow balance of political alignment which currently prevails in the Virgin Islands.[5] In addition, we also call the Court's attention to the fact that in the general election of November 3, 1964, the Democratic Party, with which respondents are

---

[4] Petition for certiorari, p. 11.

[5] See p. 66, f.n. 34 of the appendix printed with the petition for certiorari.

now affiliated, was able to secure only a bare majority of one in the eleven member Virgin Islands Legislature. *Virgin Islands Daily News*, November 4, 1964, p. 1. A six to five legislative division is hardly "one party government." Finally, and most importantly, the argument is irrelevant. So far as the United States is concerned, the history of our country shows that a considerable number of states, at various times, have had a tradition of one party rule. This may not be the best form of government; but that is a question for the electorate and not for the courts.

5. The opinion of the Third Circuit speaks for itself in demonstrating that the ultimate facts or conclusions which the District Court for the Virgin Islands drew from the evidence found no factual support in the record. *United States* v. *Parke, Davis & Co.*, 362 U.S. 29, 44.

6. An illegal conspiracy requires that there be an agreement or combination to achieve an unlawful objective or to achieve a lawful objective through unlawful means. *Texas Power Co.* v. *T.V.A.*, 306 U.S. 118, 147; 15 C.J.S. 996. Both the respondents' objective, i.e., gaining control of the leadership of the Democratic Party of the Virgin Islands, and the means used by them to achieve that objective, i.e., enrolling in the Democratic Party and soliciting the votes of the electorate of the Virgin Islands, were lawful.

7. Finally, respondents' legitimate claims to leadership of the Democratic Party of the Virgin Islands, through their majority in membership on the Territorial Committee of that Party, twice have been confirmed by the voters of the Virgin Islands. This occurred first in the primary election of November 1, 1963, when sixteen of their candidates were elected to the twenty-two member Territorial Committee of the Democratic Party of the Virgin Islands, and next in the general election of November 3, 1964, when six of their candi-

dates were elected to the eleven member Virgin Islands Legislature. In a very practical sense, therefore, the political issues which once underlay the legal questions arising in this litigation are currently moot. *Mills* v. *Green*, 159 U.S. 651, 653; 6 Moore's Federal Practice, 3074.

Conclusion

It is therefore respectfully urged that the petition for writ of certiorari should be denied.

Respectfully submitted,

ALFRED L. SCANLAN,
734-15th Street, N.W.,
Washington 5, D.C.

ANTOINE JOSEPH,
46 Company Street,
Christiansted,
St. Croix, Virgin Islands.

DAVID B. ISBELL,
Union Trust Building,
Washington 5, D.C.

JOHN L. MADURO,
33 Droningens Gade,
Charlotte Amalie,
St. Thomas, Virgin Islands.

JAMES BOUGH,
Emancipation,
Charlotte Amalie,
St. Thomas, Virgin Islands.

Attorneys for Respondents

Of Counsel:

SHEA & GARDNER,
734-15th Street, N.W.,
Washington 5, D.C.

COVINGTON & BURLING,
Union Trust Building,
Washington 5, D.C.

January 4, 1965.